

NO. 12-10070-C
IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL TONEY,
Petitioner,

vs.

SEC'Y FL. DEPT. OF CORR.
Respondents.

**MOTION FOR EXTENSION OF TIME TO FILE WRIT OF
CERTIORARI CLARENCE THOMAS PURSUANT TO THE
SUPREME COURT RULE 30-3**

I am requesting an extension of time to complete a Writ of Certiorari. I am a *pro se* litigant with no knowledge of the requirements and procedures expected of me.

Also, I am inclined to hire counsel to assist me in my last opportunity at relief, to give myself a better chance at success.

CONCLUSION

I am requesting an extension of 60 Days in case I am unable to afford a lawyer. I will be required to do extensive research for this motion.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct.

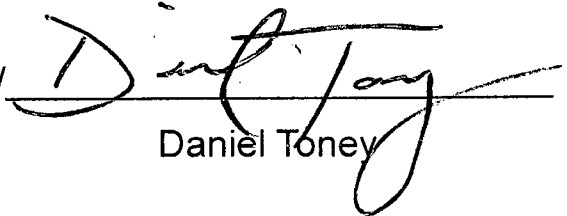
/s/ 
Daniel Toney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been placed in the hands of prison officials for mailing to the parties listed below via First Class U.S. Mail on this 10 day of March, 2022.

Clerk of Court
Supreme Court of U.S.
1 First Street, N.E.
Washington, DC 20543

Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050

/s/ 
Daniel Toney

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-10070-C

DANIEL TONEY,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: WILSON, GRANT, and LUCK, Circuit Judges.

BY THE COURT:

After considering the district court's order on remand and Appellant's "Extreme Measures Response" in which he challenges that order, this appeal is hereby DISMISSED for lack of jurisdiction.

Here, Appellant Daniel Toney ("Toney") filed three notices of appeal challenging the district court's final order dismissing his amended 28 U.S.C. § 2254 habeas petition—two in the district court and one in this Court. The

statutory time limit required that Toney file a notice of appeal on or before Monday, December 7, 2020, which was the first business day following 30 days after the entry of the judgment on November 5, 2020. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 26(a)(1)(C). However, the district court determined that Toney delivered the first and second notices of appeal to prison authorities for mailing on December 14, 2020 and January 19, 2021—7 and 43 days after the deadline to file a notice of appeal, respectively. *See Daniels v. United States*, 809 F.3d 588, 589 (11th Cir. 2015) (noting that a *pro se* prisoner's filing is deemed filed on the date it was delivered to prison authorities for mailing); *see also* Fed. R. App. P. 4(c)(1). Moreover, the third notice of appeal was stamped by the prison and initialed by Toney as delivered to prison authorities for mailing on February 1, 2021—56 days after the statutory deadline. Toney's arguments challenging the district court's findings on remand are without merit, as Toney has provided no evidence in the district court or on appeal that he filed a timely notice of appeal.

There is also no basis for relief under Federal Rule of Appellate Procedure 4(a)(5) because Toney failed to file such a motion and the notices of appeal cannot be construed as such, as they either lack any indication of an intent to seek an extension of time or were filed more than 30 days after the statutory deadline. *See* 28 U.S.C. § 2107(c); *Parker v. Strickland*, 728 F.2d 1406, 1407 (11th Cir. 1984) (stating that a late notice of appeal, in and of itself, cannot be construed as a Rule

4(a)(5) motion in a civil case). There is also no basis for relief under Federal Rule of Appellate Procedure 4(a)(6), as Toney neither alleges nor otherwise indicates that he did not receive notice of the entry of the judgment within 21 days of its entry. *See* Fed. R. App. P. 4(a)(6); *Sanders v. United States*, 113 F.3d 184, 186-87 (11th Cir. 1997) (explaining that this Court may construe a late *pro se* notice of appeal in a civil case as a motion to reopen the appeal period under Rule 4(a)(6) if there is an indication that the appellant did not receive notice of the entry of an order or judgment within 21 days of its entry). Thus, the notices of appeal are untimely and cannot invoke our Court's jurisdiction. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 26(a)(1)(C); *Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300 (11th Cir. 2010) (noting that, in a civil case, the statutory time limit for filing a notice of appeal is a jurisdictional requirement).

Any pending motions are DENIED as moot.